

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE COTE

12 CIV 0109

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THE MCGRAW-HILL COMPANIES, INC.,
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Plaintiff,
:

-against-
:

12 Civ.
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JOHN DOE D/B/A TEXTBOOKSHUB
AND JOHN DOE NOS. 1-5,
:

Defendants.
:

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COMPLAINT

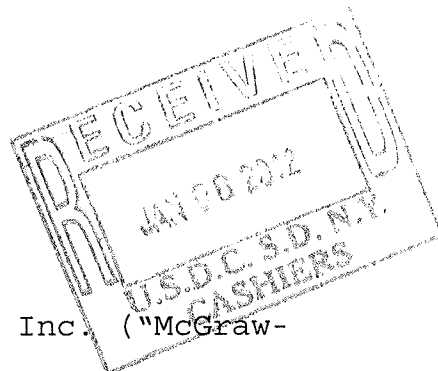
Plaintiff The McGraw-Hill Companies, Inc. ("McGraw-Hill") by its undersigned attorneys, for its complaint against defendants John Doe d/b/a Textbookshub and John Doe Nos. 1 through 5, avers:

Nature of the Action

1. McGraw-Hill is bringing this action to enforce its copyrights and trademarks against defendants' unlawful sale in the United States of non-United States versions of McGraw-Hill's educational books.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the first two claims in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because they arise under the Copyright Act, 17 U.S.C. § 101 et seq., or the Lanham Act, 15 U.S.C. § 1051 et



seq. This Court has subject matter jurisdiction over the third claim in this action pursuant to 28 U.S.C. § 1367 because it is so related to the claims within the original jurisdiction of this Court that they form part of the same case or controversy within the meaning of Article III of the United States Constitution.

3. Upon information and belief, venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

Parties

4. McGraw-Hill is a corporation organized and existing under the laws of the State of New York with its principal place of business at 1221 Avenue of the Americas, New York, New York 10020.

5. Upon information and belief, defendant John Doe d/b/a Textbookshub is a natural person currently residing in the United States whose identity is presently unknown to McGraw-Hill.

6. Upon information and belief, defendants John Doe Nos. 1-5 are natural persons currently residing in the United States whose identities are presently unknown to McGraw-Hill.

The Business of McGraw-Hill

7. McGraw-Hill publishes a variety of works, including educational books.

8. As a standard practice, McGraw-Hill requires its authors to assign the copyright to it or grant it the exclusive rights of reproduction and distribution in the United States. This practice enables McGraw-Hill to maximize dissemination of each work.

9. McGraw-Hill invests significant monies to publish its copyrighted works. McGraw-Hill, for example, makes substantial investments in royalties, content creation, licensing, copyediting, proofreading, typesetting, layout, printing, binding, distribution, and promotion.

10. McGraw-Hill earns a substantial portion of its revenue from the publication of its copyrighted works and would suffer serious financial injury if its copyrights were not enforced. A substantial decline in its income could cause McGraw-Hill to cease publishing one or more deserving books or journals. This would adversely impact the creation of new works, scholarly endeavor, and scientific progress.

11. McGraw-Hill's educational books authorized for sale in the United States are of the highest quality (the "United States Editions"). These books are generally printed with strong, hard-cover bindings with glossy protective coatings. McGraw-Hill frequently offers, with the United States Editions, academic supplements, such as CD-ROMs, computer

passwords that provide purchasers with access to academic websites corresponding to the textbooks, and study guides.

12. McGraw-Hill generally creates different versions of its educational books that are intended for sale in specific geographic markets outside of the United States (the "Foreign Editions"). The Foreign Editions materially differ from the United States Editions. The Foreign Editions have thinner paper and different bindings, different cover and jacket designs, fewer internal ink colors, if any, lower quality photographs and graphics, and generally lower prices than the United States Editions. Also, the Foreign Editions often lack academic supplements, such as CD-ROMs, website passwords, or study guides. The Foreign Editions are generally marked to indicate their lower cost by a legend indicating, in substance, that the title is a "Low Price Edition" and/or authorized for sale only in a particular country or geographic region. The Foreign Editions are uniformly manufactured outside of the United States.

McGraw-Hill's Copyrights and Trademarks

13. McGraw-Hill routinely registers its copyrights, including the copyright in the work Mechanics of Materials, Fifth Edition, by Ferdinand P. Beer, E. Russell Johnston Jr., John T. Dewolf and David F. Mazurek (TX0007268502) (September 29, 2010).

14. McGraw-Hill also owns, itself or through its parent or affiliate companies, trademarks that it uses to differentiate its products from those of its competitors.

15. Among McGraw-Hill's well-known trademarks are "McGraw-Hill," "The McGraw-Hill Companies" and "Irwin" (the "McGraw-Hill Trademarks"). The United States Registrations for the McGraw-Hill Trademarks are identified on Schedule A.

The Infringing Acts of Defendants

16. Defendants have without permission purchased Foreign Editions of McGraw-Hill's books manufactured outside of the United States, including but not limited to Mechanics of Materials, Fifth Edition, by Ferdinand P. Beer, E. Russell Johnston Jr., John T. Dewolf and David F. Mazurek, and resold them to purchasers in the United States, including purchasers in the State of New York, through the Internet using usernames including, but not limited to, "Textbookshub," at websites including, but not limited to, valorebooks.com.

17. While McGraw-Hill has only been able to publicly view the listing for Mechanics of Materials, Fifth Edition, by Ferdinand P. Beer, E. Russell Johnston Jr., John T. Dewolf and David F. Mazurek, upon information and belief, defendants' unauthorized sales of Foreign Editions are significantly greater. As of the date of this filing, defendants have received approximately 274 reviews on valorebooks.com from customers who,

upon information and belief, have purchased Foreign Editions from the defendants.

FIRST CLAIM FOR RELIEF
(Copyright Infringement - 17 U.S.C. § 501)

18. McGraw-Hill repeats the averments contained in paragraphs 1 through 17 as if set forth in full.

19. McGraw-Hill has received United States Certificates of Copyright Registration for its copyrights (the "McGraw-Hill Copyrights"), including Mechanics of Materials, Fifth Edition, by Ferdinand P Beer, E. Russell Johnston Jr., John T. Dewolf and David F. Mazurek (TX0007268502) (September 29, 2010).

20. The McGraw-Hill Copyrights are valid and enforceable.

21. Defendants have infringed the McGraw-Hill Copyrights in violation of 17 U.S.C. § 501.

22. Defendants' acts have irreparably damaged and, unless enjoined, will continue to irreparably damage McGraw-Hill. McGraw-Hill has no adequate remedy at law for these wrongs and injuries. McGraw-Hill is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining defendants and their agents, servants, employees, and attorneys and all persons acting in concert with them, from infringing the McGraw-Hill Copyrights.

23. Defendants have willfully infringed the McGraw-Hill Copyrights.

24. McGraw-Hill is entitled to recover all damages sustained as a result of defendants' unlawful conduct including (1) defendants' profits, or (2) McGraw-Hill's damages, or alternatively, at McGraw-Hill's election (3) statutory damages.

SECOND CLAIM FOR RELIEF

(Trademark Infringement - 15 U.S.C. § 1114(a))

25. McGraw-Hill repeats the averments contained in paragraphs 1 through 24 above as if set forth in full.

26. McGraw-Hill owns the McGraw-Hill Trademarks, for which it has obtained United States Trademark Registrations.

27. The McGraw-Hill Trademarks are valid and enforceable.

28. Defendants have infringed the McGraw-Hill Trademarks in violation of 15 U.S.C. § 1114(a) by using them on and/or in connection with the works that they have sold.

29. Defendants' acts complained of herein have irreparably damaged McGraw-Hill and may continue to do so. The damage to McGraw-Hill include harm to its good will and reputation in the marketplace for which money cannot compensate. McGraw-Hill has no adequate remedy at law for these wrongs. McGraw-Hill is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining defendants, their

agents, servants, employees, and attorneys and all persons acting in concert with them from using the McGraw-Hill Trademarks, or any colorable imitation of them.

30. Defendants have willfully infringed the McGraw-Hill Trademarks.

31. McGraw-Hill is entitled to recover (1) defendants' profits from the infringing books, (2) McGraw-Hill's damages, (3) the cost of the suit, and (4) reasonable attorneys' fees.

THIRD CLAIM FOR RELIEF
(Common Law Unfair Competition Under State Law)

32. McGraw-Hill repeats the averments contained in paragraphs 1 through 31 above as set forth in full.

33. Defendants' acts complained of herein have damaged and may continue to damage McGraw-Hill irreparably. The damage to McGraw-Hill include harm to its good will and reputation in the marketplace for which money cannot compensate. McGraw-Hill has no adequate remedy at law for these wrongs. McGraw-Hill is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining defendants, their agents, servants, employees, and attorneys and all persons acting in concert with them from using the McGraw-Hill Trademarks, or any colorable imitation of them, to restitution

of defendants' ill-gotten gains, and to punitive damages in an amount to be determined by the trier of fact in this action.

WHEREFORE, McGraw-Hill demands judgment:

A. Preliminarily and permanently enjoining defendants, their agents, servants, employees, and attorneys and all those acting in concert with them from infringing the McGraw-Hill Copyrights in violation of 17 U.S.C. § 501;

B. Awarding McGraw-Hill its damages or defendants' profits, or alternatively, at McGraw-Hill's election, statutory damages, as a result of defendants' willful infringement of the McGraw-Hill Copyrights;

C. Preliminarily and permanently enjoining defendants, their agents, servants, employees, and attorneys and all those acting in concert with them from infringing the McGraw-Hill Trademarks in violation of 15 U.S.C. § 1114(a);

D. Awarding McGraw-Hill its damages and/or defendants' profits from their willful infringement of the McGraw-Hill Trademarks pursuant to 15 U.S.C. § 1117(a);

E. Directing that defendants engage in such additional activities, including, but not limited to, recalls of products and corrective advertising, as may be necessary and appropriate to mitigate the damage defendants have caused.

F. Awarding McGraw-Hill its costs in this action, including its reasonable attorneys' fees pursuant 17 U.S.C.

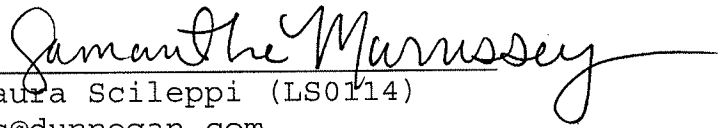
§ 505 and 15 U.S.C. § 1117;

G. Awarding McGraw-Hill punitive damages in an amount to be determined by the trier of fact in this action; and

H. Granting such other and further relief as to this Court seems just and proper.

Dated: New York, New York
January 6, 2012

DUNNEGAN & SCILEPPI LLC

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Schedule A
 "McGraw-Hill Trademarks"

<u>U.S. Trademark</u>	<u>Registration Number</u>	<u>Class</u>
1. "McGraw-Hill"	1,350,345	16
2. "McGraw-Hill"	2,899,528	16, 41
3. "The McGraw-Hill Companies"	3,103,212	9,16,35,36,37, 38,39,40,41,42
4. "Irwin"	1,718,118	16